MONTANA LEGISLATIVE HISTORY

Chapter 1 19 87

Bill H _____ S 330 Original bill & history ✓ C

H. Committee on _____			S. Committee on Labor + Employment		
Hearing Date(s)	_____	___C	Hearing Date(s)	2-14	___C
	_____	___C		2-17	___C
	_____	___C		2-19	___C
	_____	___C		_____	___C
Date Out	2-19	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

2/18	FISCAL NOTE RECEIVED		
2/20	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED		
2/23	2ND READING PASS MOTION FAILED	23	25
2/23	2ND READING INDEFINITELY POSTPONED	30	19
2/23	RECONSIDERED ACTION TO INDEFINITELY POSTPONE	34	14
2/24	2ND READING PASSED	24	21
2/25	3RD READING PASSED	26	24
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO NATURAL RESOURCES		
3/11	HEARING		
3/24	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	62	30
3/30	3RD READING CONCURRED	70	27
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	49	0
4/03	3RD READING AMENDMENTS CONCURRED	41	8
4/08	SIGNED BY PRESIDENT		
4/09	SIGNED BY SPEAKER		
4/09	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 460 EFFECTIVE DATE: 4/13/87		

SB 330 INTRODUCED BY VAN VALKENBURG, DRISCOLL, WHALEN, ET AL.
GENERALLY REVISE WORKERS' COMPENSATION LAWS

2/11	INTRODUCED		
2/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/11	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/17	FISCAL NOTE RECEIVED		
	DIED IN COMMITTEE		

SB 331 INTRODUCED BY SMITH, E., BISHOP, JACOBSON, ET AL.
ESTABLISH PHEASANT ENHANCEMENT PROGRAM

2/12	INTRODUCED		
2/12	REFERRED TO FISH & GAME		
2/12	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/20	STATEMENT OF INTENT ADOPTED		
2/20	COMMITTEE REPORT--BILL PASSED		
2/21	2ND READING PASSED	39	6
2/23	3RD READING PASSED	46	3
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO FISH & GAME		
3/17	HEARING		
3/19	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED AS AMENDED	67	27
3/30	3RD READING CONCURRED	82	15
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS NOT CONCURRED	50	0
4/14	CONFERENCE COMMITTEE APPOINTED		
4/15	CONFERENCE COMMITTEE REPORT		
4/16	2ND READING CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/17	3RD READING CONFERENCE COMMITTEE		

SB 330 INTRODUCED BY VAN VALKENBURG, DRISCOLL, WHALEN, ET AL.
GENERALLY REVISE WORKERS' COMPENSATION LAWS

2/11 INTRODUCED
2/11 REFERRED TO LABOR & EMPLOYMENT RELATIONS
2/11 FISCAL NOTE REQUESTED
2/14 HEARING
2/17 FISCAL NOTE RECEIVED
DIED IN COMMITTEE

BILL NO. 330

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE WORKERS' COMPENSATION LAWS; TO PROVIDE THAT OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING SECTIONS 2-15-1014, 19-12-401, 39-71-104, 39-71-116, 39-71-118, 39-71-204, 39-71-401, 39-71-407, 39-71-503, 39-71-611, 39-71-612, 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, 39-71-721, 39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1004, 39-71-2102, 39-71-2203, 39-71-2304, 39-71-2901 THROUGH 39-71-2907, 39-71-2909, 39-72-102, 39-72-610, 39-72-613, 39-72-701, 45-6-301, 50-16-311, 53-9-106, AND 53-9-131, MCA; REPEALING SECTIONS 39-71-309, 39-71-410, 39-71-705, 39-71-706, 39-71-709, 39-71-1001 THROUGH 39-71-1003, 39-71-1005, 39-71-2908, 39-72-611, AND 39-72-612, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1014, MCA, is amended to read:

"2-15-1014. Office of workers' compensation ~~judge~~ court -- allocation -- appointment -- salary. (1) There is ~~the office of~~ a workers' compensation ~~judge~~ court. The ~~office~~ court is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint ~~the~~ two workers' compensation ~~judge~~ judges, each to serve for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy shall be filled in the same manner as the original appointment. The second judge, to be appointed pursuant to legislative authorization adopted in 1987, shall take office effective January 1, 1988. The governor shall designate one of the two appointees as chief judge whose duties, in addition to those set forth in Title 39, chapters 71 and 72, include the administration of the office, budget preparation, personnel hiring and management, and court administration.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) ~~The~~ A workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the

INTRODUCED BILL
SB-330

public employees' retirement system."

Section 2. Section 39-71-104, MCA, is amended to read:

"39-71-104. Court to ~~give--liberal--construction--to chapter~~ construe chapter according to terms. ~~Whenever--this chapter--or--any-part-or-section-thereof-is-interpreted-by-a court,-it-shall-be-liberally-construed-by-such-court.~~ It is the intent of the legislature that the Workers' Compensation Act be construed according to its terms. The act may not be liberally construed in favor of any party."

Section 3. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving ~~wife-or-husband~~ spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of ~~25~~ 22 years

who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established for the purpose of certifying rehabilitation practitioners.

~~(3)~~(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. ~~Any-person-hauling-or-assisting-in--hauling of---sugar--beets--or--grains,--in--case--of--emergency,--is~~

~~considered engaged in casual employment.~~

~~(4)~~(5) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

~~(5)~~(6) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

~~(6)~~(7) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.~~

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) (a) "Normal labor market" means the occupations for which a claimant may be qualified, consistent with the claimant's age, education, vocational experience, and aptitude and compatible with the claimant's physical condition and limitations as a result of the claimant's

injuries.

(b) As to the geographical area to be considered in which the normal labor market exists, the area shall be determined by considering:

(i) the claimant's residence;

(ii) the location of the claimant's employment at the time of injury;

(iii) the claimant's previous commuting distance to work; and

(iv) a reasonable commuting distance from the place of residence to the location of the proposed employment.

(c) Also considered are the claimant's physical limitations as a result of the injury, the cost of such commuting, and the wages of prospective employment.

~~(10)~~(11) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

~~(11)~~(12) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are

available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

~~(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.~~

~~(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.~~

~~(14)~~(13) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(15)~~(14) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of

carrying on his usual trade, business, or occupation.

~~(16)~~(15) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(17)~~(16) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(18)~~(17) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. A worker shall be paid temporary total disability benefits during a reasonable period of retraining. Disability shall be supported by a preponderance of medical evidence.~~

~~(20)~~(18) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. ~~Sick leave benefits accrued by employees of~~

~~public-corporations,-as-defined-by-subsection-(16)--of--this section,--are--considered--wages.~~ A collective bargaining agreement is not the sole factor to be considered in determining wages.

~~(21)-"Wife"--or--"widow"--means--only--a--wife-or-widow living-with-or-legally--entitled--to--be--supported--by--the deceased-at-the-time-of-the-injury.~~

~~(22)~~(19) "Year", unless otherwise specified, means calendar year."

Section 4. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116~~(3)~~ are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these

casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education approved by the state board of public education at designated postsecondary vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of

such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 5. Section 39-71-204, MCA, is amended to read:

"39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards -- limitation -- effect. (1) Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division or the workers' compensation ~~judge~~ court shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years

after the same has been approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation ~~judge~~ court has jurisdiction to make a determination. ~~Except as provided in 39-71-2908, the~~ The division or the workers' compensation ~~judge~~ court shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards."

NEW SECTION. Section 6. Filing claim -- obtaining benefits through deception or other fraudulent means -- criminal penalty. (1) A person filing a claim under chapter 71 or 72 of this title, by signing the claim, affirms the information filed is correct to the best of that person's knowledge.

(2) A person may be guilty of theft under 45-6-301 who files or assists in the filing of a false claim for benefits to which the person is not entitled under chapter 71 or 72 of this title. A county attorney may initiate criminal proceedings against the person.

Section 7. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) ~~of this section~~, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116~~(3) except employment of a volunteer under 67-2-105~~;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors ~~and who are not contracting for agricultural services to be performed on~~

~~a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home~~;

(e) a broker or salesman performing under a license issued by the board of realty regulation;

(f) a direct seller engaged in the sale, primarily in the customer's home, of consumer products;

~~(e)~~(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

~~(f)~~(h) any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

~~(g)~~(i) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter;

~~(h)~~(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an

~~independent contractor and who is not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.~~ is bound personally and individually by the provisions of compensation plan No. 1, 2, or 3. However, under rules promulgated by the division and subject to division review, he may elect not to be bound as an employee under this chapter by delivering a written notice to the division and the insurer, if any, on a form provided by the division.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, subject to

division review, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice on a form provided by the division. The notice must be served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the division;

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the division, and the insurer.

(b) If the employer changes plans or insurers, his previous election not to be bound is not effective. The officer shall again serve notice if he elects not to be bound.

(c) The appointment or election of an employee to be an officer of a corporation in order to exclude the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice under oath or affirmation and is subject to the penalties for false swearing under 45-7-202.

(d) The division shall review an election not to be bound as an employee made by an officer of a private

corporation to assure that the election complies with this chapter.

~~(4)~~(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

NEW SECTION. Section 8. Financial incentives to institute safety programs. The state compensation insurance fund, plan No. 3, and private insurers, plan No. 2, may provide financial incentives to an employer who implements a formal safety program. The insurance carrier may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

Section 9. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers. (1) Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that such claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers a compensable injury or death while traveling is not covered by this chapter except if:

(a) the employer furnishes the mode of transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(b) the travel is necessitated by and on behalf of the

employer as an integral part of or condition of the employment.

(4) An employee who is under the influence of intoxicating beverages or intoxicating drugs and who suffers an injury or death otherwise compensable under this chapter is not entitled to benefits if the injury or death is caused by the intoxication of the employee."

Section 10. Section 39-71-503, MCA, is amended to read:

"39-71-503. Administration of fund. (1) The division shall administer the fund and ~~shall~~ pay all proper benefits to injured employees of uninsured employers.

(2) ~~Proper--surpluses--and--reserves-shall-be-kept-for the-fund.~~ Surpluses and reserves may not be kept for the fund. The division shall make payments, as it considers appropriate, as funds become available. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits may be made from the fund.

(3) The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund."

Section 11. Section 39-71-611, MCA, is amended to read:

"39-71-611. ~~Costs--and--attorneys'~~ Attorneys' fees

payable on denial of claim or termination of benefits later found compensable. ~~In--the--event~~ If an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation ~~judge~~ court or on appeal and if it is determined by the workers' compensation court that the actions of the insurer in denying liability or terminating benefits were unreasonable, the insurer shall pay reasonable ~~costs-and~~ attorneys' fees as established by the workers' compensation ~~judge~~ court."

Section 12. Section 39-71-612, MCA, is amended to read:

"39-71-612. ~~Costs-and-attorneys'~~ Attorney fees that may be assessed against an ~~employer-or~~ insurer by workers' compensation ~~judge~~ court. (1) If an ~~employer-or~~ insurer pays or ~~tenders~~ submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation ~~judge~~ court for adjudication of the controversy, and the award granted by the ~~judge~~ court is greater than the amount paid or ~~tendered~~ offered by the ~~employer-or~~ insurer, a reasonable attorney's fee as established by the workers' compensation ~~judge~~ court if the case has gone to a hearing may be awarded by the ~~judge~~ court in addition to the amount of

compensation. However, an award of attorney fees may be made only if the workers' compensation court determines that the actions of the insurer were unreasonable. A written offer of payment made 30 days or more before the date of hearing before the court is considered a valid offer of payment.

~~(2)--When-an--attorney's--fee--is--awarded--against--an employer--or-insurer-under-this-section-there-may-be-further assessed-against-the-employer-or-insurer--reasonable--costs, fees,--and--mileage--for--necessary--witnesses--attending--a hearing-on-the-claimant's-behalf.-Both-the-necessity-for-the witness-and-the-reasonableness-of-the-fees-must-be--approved by-the-workers'-compensation-judge.~~

(2) A finding of unreasonableness against an insurer made under sections 39-71-611 or 39-71-2907 or this section does not constitute a finding that the insurer has acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."

NEW SECTION. Section 13. Costs assessed by the workers' compensation court. Reasonable costs must be assessed by the workers' compensation court against an insurer in proceedings before the court if an insurer:

(1) denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the court or on appeal; or

(2) pays or submits an offer of payment of

compensation but controversy relates to the amount of compensation due and the court awards an amount greater than the amount paid or offered by the insurer.

Section 14. Section 39-71-614, MCA, is amended to read:

"39-71-614. Calculation of attorney fees. (1) The amount of an attorney's fee assessed against an employer or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before the workers' compensation ~~judge~~ court. The attorney must document the time spent and give the documentation to the judge. The judge shall determine a reasonable attorney fee and assess costs. He is not bound by the documentation submitted to him. The hourly fee the judge applies to the time spent must be based on the attorney's customary and current hourly fee for legal work performed in this state.

(2) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against ~~an-employer-or~~ insurer under ~~39-71-611-or-39-71-612-and~~ this section and [section 13] must be deducted from the fee an attorney is entitled to

from the claimant under a contingency fee arrangement."

NEW SECTION. Section 15. Employer may not terminate employee for filing claim -- preference. (1) An employer may not terminate an employee solely on the basis that the employee filed a claim under chapter 72 of this title or this chapter.

(2) If the injured employee is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the injured employee must be given preference over new hires for any comparable position that becomes vacant within the 2-year period if the position is consistent with the employee's physical condition and vocational abilities.

Section 16. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for injuries ~~producing~~ resulting in temporary total disability.

(1) An injured worker is entitled to temporary total disability benefits if, after an injury and as a result of the injury, the worker has a total loss of wages and cannot return to any kind of regular employment in the normal labor market. The benefits must be paid until the injured worker is as far restored as the permanent character of the injuries will permit. The determination of a temporary total disability condition must be supported by a preponderance of

medical evidence.

~~(1)~~(2) Weekly compensation benefits for an injury ~~producing total~~ resulting in temporary total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed ~~$110 beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed~~ the state's average weekly wage. The weekly benefit established for the injured worker at the time of injury may not be changed by any subsequent adjustment in the state's average weekly wage for future fiscal years. ~~Total temporary~~ Temporary total disability benefits ~~shall~~ must be paid for the duration of the worker's temporary total disability.

~~(2)~~(3) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement."

Section 17. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for injuries ~~producing~~ resulting in continuing total ~~permanent~~ disability. (1) If

an injured worker is no longer temporarily totally disabled yet continues to have a total loss of wages and has no reasonable prospect of finding regular employment of any kind in the normal labor market due to the worker's injuries, the worker is entitled to continuing total disability benefits. The benefits must be paid during the duration of the worker's continuing total disability. The determination of a continuing total disability entitlement must be supported by a preponderance of evidence.

~~(1)~~(2) Weekly compensation benefits for an injury ~~producing--total--permanent~~ resulting in continuing total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage. ~~Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.~~

~~(2)~~(3) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(4) If an injured worker is entitled to continuing

total disability benefits for 104 weeks, a cost-of-living adjustment must be made to the worker's weekly benefit payments at the next succeeding July 1 after 104 weeks of continuing total disability benefits have been paid. A cost-of-living adjustment must be made each July 1 thereafter. However, an injured worker may not receive more than 10 cost-of-living adjustments. The cost-of-living adjustment is the percentage increase, if any, in the increase in the state's average weekly wage over the state's average weekly wage of the previous year, or 3%, whichever is less."

Section 18. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for injuries ~~causing~~ resulting in permanent partial disability. ~~(1)--Weekly compensation---benefits---for---injury---producing---partial disability--shall-be-66-2/3%-of-the-actual-diminution-in-the worker's-earning-capacity-measured-in-dollars,-subject-to--a maximum--weekly-compensation-of-one-half-the-state's-average weekly-wage.~~

~~(2)--The-compensation-shall-be-paid-during--the--period of-disability,-not-exceeding,-however,-500-weeks-in-cases-of partial---disability.---However,--compensation--for--partial disability-resulting-from-the--loss--of--or--injury--to--any member--shall--not--be-payable-for-a-greater-number-of-weeks

~~than is specified in 39-71-705 for the loss of the member.~~

(1) If an injured worker suffers a permanent partial disability as a result of an injury and the worker is no longer entitled to temporary total disability or continuing total disability benefits, the worker is entitled to an award for permanent partial disability.

(2) A permanent partial disability condition is:

(a) a condition for which an initial determination has been established by a physician that the injured worker suffers from a medically determined impairment; or

(b) a permanent physical condition that impairs the injured worker's ability to work.

(3) An impairment rating must be rendered using the Guides to the Evaluation of Permanent Impairment of the American medical association, 2nd edition, copyright 1984. If an impairment rating is rendered, it must be expressed as a percentage of the impairment of the whole person.

(4) An injured worker who is entitled to an award for permanent partial disability must receive a wage loss award or an indemnity award.

(a) The following procedure must be used for a wage loss award:

(i) If an injured worker demonstrates an actual wage loss as a result of an injury or that the worker would have an actual wage loss if the worker had to compete in the

normal labor market, the worker is entitled to an amount based on 66 2/3% of the wage loss, subject to a maximum weekly benefit of 50% of the state's average weekly wage.

(ii) The wage loss benefits must be paid during the duration of the wage loss, subject to a maximum of 350 weeks.

(b) The following procedure must be used for an indemnity award:

(i) If an injured worker who suffers from a medical impairment cannot establish a wage loss or elects not to take wage loss benefits but can establish by a preponderance of the evidence that the worker's ability to engage in gainful employment is diminished or may reasonably be expected to be diminished in the future, the injured worker is entitled to an indemnity award. The award must be based on a percentage of disability. The percentage must be multiplied by 350 weeks to determine the number of weeks granted as an indemnity award.

(ii) Weekly compensation benefits for a permanent partial indemnity award are 66 2/3% of the wages received at the time of injury, subject to a maximum weekly benefit of 50% of the state's average weekly wage.

(iii) The percentage of permanent partial disability caused by any single accident or injury must be computed to cover the permanent partial disability caused by that

particular injury only, and benefits for successive injuries must be adjusted as provided in 39-71-738.

(iv) Factors to be considered in determining an indemnity award include the worker's medical impairment rating, physical condition, age, education, work history, continuing pain, actual wage loss, loss of potential future earnings, and any other relevant factor affecting the worker's ability to engage in gainful employment. The granting of a medical impairment rating does not establish any automatic entitlement to an award based on such rating or any requirement for payment of an award based on such rating.

(5) The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(6) An injured worker may receive a wage loss award and also receive an indemnity award under subsection (4), but in no case may an injured worker receive more than 350 weeks of permanent partial disability for an injury."

Section 19. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method

of determining the median of billed medical fees. These rules shall be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) The division shall establish all rates for hospital fees and charges necessary for the treatment of an injured worker. Approved rates are in effect for a period of 12 months from the date of approval. The rates must reflect the variances in hospital size and available services. The division shall coordinate this ratesetting function with other state agencies that have similar responsibility."

Section 20. Section 39-71-708, MCA, is amended to read:

"39-71-708. Compensation for disfigurement. (1) The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed $2,500, in addition to any other indemnity benefits payable under ~~39-71-705, 39-71-706, or~~ 39-71-707.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability."

NEW SECTION. Section 21. Benefits not due while claimant is incarcerated. A claimant is not entitled to and may not receive any compensation disability benefits, including temporary total, permanent partial, or continuing

total benefits, while the claimant is incarcerated by any governmental entity after conviction of a felony.

Section 22. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of ~~such~~ death, then the beneficiary of the deceased, ~~as the case may be,~~ is entitled to the same compensation as though the death occurred immediately following the injury, ~~but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the injury.~~

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for an injury causing death are ~~computed at~~ 66 2/3% of the decedent's wages. The maximum weekly compensation ~~benefits~~ benefit may not exceed the state's average weekly wage. The minimum weekly compensation ~~for death~~ benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death. The established weekly benefit may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits must be paid to the

extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage. The established weekly benefit may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a ~~widow or widower for life or~~ surviving spouse for 500 weeks subsequent to the date of the employee's death, or until the surviving spouse's remarriage, ~~and in the event of remarriage, 2 years' benefits must be paid in a lump sum to the widow or widower.~~ whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in subsections (2)(b) through (2)(d) of 39-71-116.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2)."

Section 23. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation -- from what date paid. (1)

No compensation may be paid for the first ~~5 days~~ 6 days' loss of wages due to an injury. ~~If loss of wages continues for more than 5 days, compensation shall be paid from the date of injury.~~ Compensation must be paid starting with the 7th day of wage loss. However, separate benefits of medical and hospital services shall be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to have a wage loss if the worker is receiving sick leave benefits, except that each day for which the worker receives sick leave benefits counts 1 day toward the 6-day waiting period."

Section 24. Section 39-71-737, MCA, is amended to read:

"39-71-737. Compensation to run consecutively -- exceptions. (1) Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that indemnity benefits under ~~39-71-705 through~~ 39-71-707 and 39-71-708 and temporary total disability benefits may be paid concurrently. However, subject to the provisions of 39-71-741, this section does not prevent:

(a) the payment of a lump-sum advance settlement against projected future permanent partial indemnity benefits while a claimant is receiving temporary total

disability benefits; or

(b) a settlement of a combination of different classes of disability benefits into a lump sum or into a combination of periodic and lump-sum payments.

(2) A controversy between a claimant and an insurer regarding a settlement authorized under this section is a dispute for which the workers' compensation ~~judge~~ court has jurisdiction to make a determination."

Section 25. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments -- division approval required. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. ~~Regardless of the date of the injury or of a prior lump-sum payment, a~~ A lump-sum conversion of ~~permanent total biweekly~~ future projected continuing total disability payments awarded or paid ~~after April 15, 1985, must equal the estimated present value of the total unpaid permanent total biweekly payments, assuming interest at 7% per year, compounded annually, unless the conversion improves the financial condition of the worker or his beneficiary, as provided in subsection (2)(b). If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics,~~ must be discounted based on the discount figure adopted by the division for the fiscal year in which the lump sum is awarded or paid. The discount figure must be adopted by the division, rounded to the nearest whole number, and based on the average rate for United States 10-year treasury bills in the previous calendar year. A conversion of continuing total disability benefits must be based on the weekly benefit rate established for the injured worker immediately after the injury, and may not take into consideration any cost-of-living adjustments as provided for in 39-71-702. A lump-sum conversion of permanent partial disability benefits may not be discounted.

(2) The conversion of future biweekly benefits can only be made upon the written ~~application~~ petition of the injured worker or the worker's beneficiary, and with the concurrence of the insurer, ~~and approval of the conversion rests in the discretion of the division as to the amount of the lump-sum payment and the advisability of the conversion.~~ A conversion must be in the claimant's best interest. It is presumed that biweekly payments are in the best ~~interests~~ interest of the worker or his beneficiary. The ~~approval or~~ award of a lump-sum conversion by ~~the division or~~ the

workers' compensation ~~judge must be the exception, not the rule, and~~ court may be ~~given~~ granted only if the worker or his beneficiary demonstrates that ~~his ability to sustain himself financially is more probable with a~~ it is in the injured worker's best interest to allow a whole or partial lump-sum conversion. ~~than with the biweekly payments and his other available resources. The following procedure must be used by the division and the workers' compensation judge in determining whether a lump sum conversion of permanent total biweekly payments will be approved or awarded.~~ A conversion of future benefits into a lump sum is not considered in a claimant's best interest unless the claimant is able to demonstrate:

(a) that the lump sum is reasonably necessary to meet the claimant's pressing financial needs;

(b) that the lump sum is necessary to fund an approved rehabilitation plan if the rehabilitation plan provides a reasonable reentry into gainful employment for the claimant; or

(c) the parties agree to the payment of the lump sum. If the parties agree, the division may disapprove the lump-sum payment only if it finds that a lump-sum payment would clearly be detrimental to the claimant.

~~(a) The difference between the present discounted value of a lump sum and the future value of the biweekly~~

~~payments cannot be the only grounds for approving or awarding a lump sum conversion.~~

~~(b) A lump sum conversion that improves the financial condition of the worker or his beneficiary over what would have been reasonably expected had the worker not been injured or died can be approved or awarded only if the lump sum conversion is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period. The worker or his beneficiary must demonstrate the financial condition that would have been reasonably expected, taking into consideration his age, education, work experience, and probable job promotions and pay increases.~~

~~(c) If the existing delinquent or outstanding debts are used as grounds for a lump sum conversion, the worker or his beneficiary must demonstrate through a debt management plan that a lump sum for that purpose is necessary to sustain himself financially.~~

~~(d) If a business venture is used as grounds for a lump sum conversion, the worker or his beneficiary must demonstrate through a business plan that a lump sum for that purpose is necessary to sustain himself financially. The business plan must at least show the feasibility of the business, given the market conditions in the intended market~~

~~area, and the cash that will be available to him on a biweekly basis after start-up costs and other business expenses are considered throughout the expected life of the venture.~~

~~(3) If the division finds that an application for lump-sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the division may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational, or other evaluative studies to determine whether a lump-sum conversion is in the best interest of the worker or his beneficiary.~~

~~(4)~~(3) The division has full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. However, the division may not unreasonably withhold approval. Any settlement of a claim that includes the conversion of future benefits into a lump sum must meet the requirements of subsection (2). Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim. If the division does not act upon a petition for settlement within 30 days from the date it receives the

petition, the petition is considered approved.

~~(5)~~(4) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum, ~~is considered a dispute~~ and the rejection by the division of an agreement between a claimant and an insurer for a conversion of biweekly payments into a lump sum, are disputes for which the workers' compensation ~~judge~~ court has jurisdiction to make a determination."

Section 26. Section 39-71-803, MCA, is amended to read:

"39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the ~~specific loss schedule provided for in 39-71-705~~ provisions of 39-71-703 concerning permanent partial disability."

Section 27. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) ~~The payments provided in 39-71-1003 shall~~ Payment for the vocational rehabilitation benefits provided by the department of social and rehabilitation services under [sections 29 and 30] must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account shall be made on or before

July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the division, an amount to be determined by the division, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services."

NEW SECTION. Section 28. Required rehabilitation. (1) The division may, in accordance with this part, require a claimant to pursue a rehabilitation program in order to continue receiving workers' compensation benefits.

(2) A rehabilitation program is a prescribed program of goods and services for the purpose of assisting an injured worker return to work.

(3) The rehabilitation program must allow for the claimant's limitations and the availability of work within the normal labor market. Priorities for the return of the injured worker to work must be determined by selecting the first appropriate action in the following sequence:

(a) a return to the same position of employment;

(b) a return to a modified position of employment;

(c) employment in a related occupation considered appropriate and suited to the worker's education and marketable skill levels;

(d) rehabilitation in an on-the-job training program;

(e) rehabilitation in a short-term retraining program (less than 24 months);

(f) rehabilitation in a long-term retraining program (48-month maximum); or

(g) self-employment.

(4) Once the claimant has been restored to a normal labor market pursuant to any of these priorities, the worker's need to engage in a rehabilitation program ceases and the worker must be awarded benefits, if any, pursuant to 39-71-703.

NEW SECTION. Section 29. Referral of disabled workers for rehabilitation services. (1) Rehabilitation services may be requested by the injured worker, the insurer, or the division. The division shall then require the insurer to designate a rehabilitation provider.

(2) The division shall notify the department of social and rehabilitation services of an injured worker who, in the opinion of the division, requires vocational rehabilitation services as provided in Title 53, chapter 7. The department of social and rehabilitation services, in providing vocational rehabilitation services to the injured worker,

shall consult with the rehabilitation provider designated by the insurer, if other than the department.

(3) Rehabilitation services provided under this part must be delivered by a rehabilitation counselor certified by the board for rehabilitation certification, by a vocational rehabilitation counselor employed by the department of social and rehabilitation services, or by both.

(4) An injured worker served by the department of social and rehabilitation services shall receive vocational rehabilitation services in accordance with Title 53, chapter 7, parts 1 and 2, and may receive only the vocational rehabilitation services authorized in those parts. The department of social and rehabilitation services shall process each case in a reasonably timely manner.

(5) The appeal process before the board of social and rehabilitation appeals provided in 53-7-106 is the exclusive remedy for any person aggrieved in the receipt of services from the department of social and rehabilitation services under this part. Appeal may be made to the district court from a decision of the board under Title 2, chapter 4, part 7.

NEW SECTION. Section 30. Documentation of rehabilitation determination to the division. (1) If an insurer's designated rehabilitation provider determines that all appropriate rehabilitation services have been provided

to the injured worker in accordance with [section 28(3)], the insurer shall document that determination to the division.

(2) If the department of social and rehabilitation services determines that all appropriate rehabilitation services have been provided to the injured worker in accordance with [section 28(3)], the department shall document that determination to the division.

NEW SECTION. Section 31. Biweekly benefits under rehabilitation plan -- eligibility -- disputes. (1) An injured worker referred for rehabilitation by the division must be paid temporary total disabil benefits if the injured worker participates:

(a) in a rehabilitation program approved in writing by the insurer's designated rehabilitation provider; or

(b) through the department of social and rehabilitation services in vocational rehabilitation provided under an individualized written rehabilitation plan designed in accordance with [section 28].

(2) If a dispute exists concerning the need for or sufficiency of a rehabilitation program, the division shall, upon request of the injured worker or the insurer, review the matter. After consultation with the department of social and rehabilitation services and the designated rehabilitation provider, the division may direct the

claimant to participate in the rehabilitation program or direct such other action as the division considers appropriate. The determination of the division must be in writing and be supported by the division's reasoning and the basis for its decision. The division's determination must take place within 30 days of the request.

(3) If the division determines that a rehabilitation program is available and appropriate for a claimant receiving workers' compensation benefits, the division shall require the claimant to participate in the program. If a claimant refuses to participate in the program, the issue regarding the availability and appropriateness of the program must be brought before the workers' compensation court. Weekly benefits must continue pending a decision by the court as to the availability and appropriateness of the program. If the court determines that the program is available and appropriate and if the claimant continues to refuse to participate in the program, weekly benefits may be terminated.

(4) (a) If the court determines that a claimant unreasonably refused to participate, the insurer must be given credit for all benefits paid against future compensation payments during the period when the claimant unreasonably refused to participate in the prescribed rehabilitation program.

(b) If the court finds in favor of the claimant, the court may award reasonable attorney fees and costs to the claimant.

NEW SECTION. Section 32. Sharing case information. (1) The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the division shall provide to one another case information as necessary to carry out the purpose of this part.

(2) The division shall make an injured worker's records available to the injured worker and the worker's insurer upon request.

Section 33. Section 39-71-2102, MCA, is amended to read:

"39-71-2102. Proof of solvency to be filed. (1) Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

(2) The division shall require an employer who elects to be bound by compensation plan No. 1 to provide a security deposit. The security deposit may be a surety bond, a guaranty of the parent company (self-insured in this state), or excess insurance. The security deposit must be the greater of $250,000 or an average of benefits incurred by the employer for the past 3 calendar years."

Section 34. Section 39-71-2203, MCA, is amended to read:

"39-71-2203. Content of policies -- policies subject to approval, change, or revision by division. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) (a) Every policy or contract insuring against

liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(b) An employer may make direct benefit payments to an injured worker if the worker participates in a deductible plan with an insurer.

(4) Every such policy shall at all times be subject to approval, change, or revision by the division and shall contain the clauses, agreements, and promises required by this chapter."

Section 35. Section 39-71-2304, MCA, is amended to read:

"39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither

more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume

discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) The division may provide employers with a program of deductible policies if in the division's discretion a program is warranted. If a policyholder fails to honor the provisions of the plan, the division shall assume liability. The division may determine the composition of the plan according to the risk assumed for individual policyholders."

Section 36. Section 39-71-2901, MCA, is amended to read:

"39-71-2901. Location of office -- general powers. (1) The principal office of the workers' compensation ~~judge~~ court shall be in the city of Helena.

(2) The chief workers' compensation judge shall establish procedures for the allocation of the case load

between the judges.

(3) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it or its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court."

Section 37. Section 39-71-2902, MCA, is amended to read:

"39-71-2902. Operating expenses. The workers' compensation ~~judge~~ court may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation ~~judge~~ court, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund."

Section 38. Section 39-71-2903, MCA, is amended to read:

"39-71-2903. Administrative procedure act, common law, and rules of evidence applicable -- ~~judge not~~ court bound by

rules of evidence. All proceedings and hearings before the workers' compensation ~~judge~~ court shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. ~~However,--the~~ The workers' compensation ~~judge~~ court is ~~not~~ bound by common law and statutory rules of evidence."

Section 39. Section 39-71-2904, MCA, is amended to read:

"39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation ~~judge~~ court shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases."

Section 40. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation ~~judge~~ court. (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 or 72 of this title may, after following the procedure provided in subsection (2), petition the workers' compensation ~~judge~~ court for a determination of the dispute. Jurisdiction does not extend to disputes under [section 10]. The ~~judge~~ court, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 or 72 of

this title. If the dispute relates to benefits due a claimant under chapter 71 or 72, the ~~judge~~ court shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation ~~judge~~ court has exclusive jurisdiction to make determinations concerning disputes under ~~chapter~~ chapters 71 and 72, except as provided in 39-71-516 and [subsection (5) of section 29]. The penalties and assessments allowed against an insurer under ~~chapter~~ chapters 71 and 72 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under ~~chapter~~ chapters 71 and 72.

(2) (a) Before a claimant or an insurer may petition the court for resolution of a dispute, the petitioner shall attempt to resolve the dispute by providing the other party with a written demand requesting resolution of the dispute. The demand must include:

(i) a complete explanation of the dispute;

(ii) copies of documents or other information supporting the position taken by the party claiming the dispute; and

(iii) a suggested resolution of the dispute.

(b) The party receiving the demand described in subsection (2)(a) has 20 days from the date of receipt to propose a resolution. If, within 20 days from the date of receipt of the demand, no agreement resolving the dispute is

entered into, the party claiming the dispute may file a petition with the workers' compensation court.

(3) A party may move to dismiss a petition if it contends that the petitioner has not complied with subsection (2)(a). A ruling on the motion must be based on documentary evidence submitted to the court by the parties."

Section 41. Section 39-71-2906, MCA, is amended to read:

"39-71-2906. Nominal disability awards. The ~~judge~~ court may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment but no disability has resulted therefrom."

Section 42. Section 39-71-2907, MCA, is amended to read:

"39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation ~~judge~~ court granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation ~~judge~~ court by 20%. The question of

unreasonable delay or refusal shall be determined by the workers' compensation ~~judge~~ court, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein."

Section 43. Section 39-71-2909, MCA, is amended to read:

"39-71-2909. Authority to review, diminish, or increase awards -- limitation. The ~~judge~~ court may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the ~~judge~~ court or benefits received by a claimant through settlement agreements. However, the ~~judge~~ court may not change any final settlement or award of compensation more than 4 years after the settlement has been approved by the division or any order approving a full and final compromise settlement of compensation."

NEW SECTION. Section 44. Filing fee. A claimant or an insurer who files a petition for hearing under chapter 71 or 72 shall pay a filing fee of $25. A party required to file a notice of appearance of counsel as provided by court procedural rules shall pay an appearance fee of $25. The fees collected under this section must be deposited monthly

in the fund collected by the division under 39-71-201. The court procedural rules must provide for the method of payment. The money collected under this section is a cost recoverable under [section 13].

NEW SECTION. Section 45. Signing of petitions, pleadings, motions, and other papers -- sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless

increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the petitioner, pleader, or movant.

(5) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

Section 46. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided

under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapters 71 and 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

~~(5)~~(6) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

~~(6)~~(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 47. Section 39-72-102, MCA, is amended to

read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116~~(4)~~.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116~~(5)~~.

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

~~(7) "Husband" is as defined in 39-71-116(7).~~

~~(8)~~ (7) "Independent contractor" is as defined in 39-71-120.

~~(9)~~ (8) "Insurer" is as defined in 39-71-116(8).

~~(10)~~ (9) "Invalid" is as defined in 39-71-116(9).

~~(11)~~ (10) "Occupational disease" means all diseases arising out of or contracted from and in the course of employment.

~~(12)~~ (11) "Order" is as defined in 39-71-116~~(10)~~.

~~(13)~~ (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

~~(14)~~ (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

~~(15)~~ (14) "Wages" is as defined in 39-71-116~~(20)~~.

~~(16) "Wife" is as defined in 39-71-116(21).~~

~~(17)~~ (15) "Year" is as defined in ~~39-71-116(6) and 39-71-116(22)~~ 39-71-116(7) and (19)."

Section 48. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before ~~the division or~~ the workers' compensation ~~judge~~ court, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional

medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 49. Section 39-72-613, MCA, is amended to read:

"39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the ~~division~~ court and the claim is determined compensable by the ~~division~~ court after the hearing ~~and-the-insurer-does-not-appeal--the division's--decision--to--the--workers'--compensation-judge~~, reasonable costs and attorney fees, as determined by the ~~division~~ court, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of ~~the--division to~~ the workers' compensation ~~judge-or-from-the-judge~~ court to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation ~~judge~~ court, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation ~~judge~~ court, and the supreme court.

(3) The fee awarded must be calculated as provided in 39-71-614."

Section 50. Section 39-72-701, MCA, is amended to read:

"39-72-701. Compensation for total disability or death

due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or ~~permanently~~ continuingly totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, ~~permanent~~ continuing total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement."

Section 51. Section 19-12-401, MCA, is amended to read:

"19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must

meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year,

a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), he must have attained the age of 55, but he need not be an active volunteer firefighter or an active member of any volunteer fire company when he reaches that age.

(b) An active member of a volunteer fire company whose duty-related injury results in a ~~permanent,~~ continuing total disability as defined in ~~39-71-116(13)~~ 39-71-702 is eligible to receive a partial pension regardless of his age calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which he claims credit under subsection (1), he must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of his volunteer fire company.

(4) Effective July 1, 1965, no volunteer firefighter may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in

serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) He must have ceased to be an active member of any volunteer fire company, and if he applies for and receives pension benefits hereunder, he will not thereafter be eligible to become an active member of any volunteer fire company."

Section 52. Section 50-16-311, MCA, is amended to read:

"50-16-311. When consent is required to release or transfer confidential health care information. (1) Except as provided in subsection (2) or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, confidential health care information relating to a person may not be released or transferred without the written consent of the person or his authorized representative.

(2) Consent is not required for release or transfer of confidential health care information:

(a) to a physician, dentist, or other medical person for diagnosis or treatment of an individual in a medical or dental emergency;

(b) to a peer review committee if the information

concerns matters within the scope of the licensed professional practice of the committee members;

(c) to qualified persons for the purpose of conducting scientific research, management audits, financial audits, program evaluations, or similar studies. However, qualified persons may not directly or indirectly identify an individual patient in a research report, audit, or evaluation or disclose a patient's identity in any manner.

(d) to a health care provider:

(i) as may be reasonably necessary to provide health care services to the individual about whom the information relates; or

(ii) in the administration of the office, practice, or operation in connection with the providing of health care services to the individual about whom the information relates;

(e) to an employer as may be reasonably necessary in the administration of a group insurance plan or to a workers' compensation insurer, the division of workers' compensation, or the workers' compensation ~~judge~~ court, as is necessary in the administration of Title 39, chapters 71 and 72;

(f) when a person's insurance coverage obligates more than one insurer with respect to a claim or benefit;

(g) to a state insurance department for the purpose of

reviewing an insurance claim or complaint made to such department by an insured or his authorized representative or by a beneficiary or his authorized representative of a deceased insured;

(h) to a law enforcement officer about the general physical condition of a person being treated in a health care facility if such person was injured on a public roadway or was injured by the possible criminal act of another;

(i) to the news media about the general physical condition of an injured person being treated in a health care facility, provided the existence of the hospitalization is publicly known.

(3) For the purpose of this section, the term "general physical condition" is limited to a description of the condition as "satisfactory", "serious", or "critical"."

Section 53. Section 53-9-106, MCA, is amended to read:

"53-9-106. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before the

workers' compensation ~~judge~~ court, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney."

Section 54. Section 53-9-131, MCA, is amended to read:

"53-9-131. Appeals. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation ~~judge~~ court for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation ~~judge~~ court shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. ~~However, the workers' compensation judge is not bound by common law and statutory rules of evidence.~~

(3) Notwithstanding Title 2, chapter 4, part 7, an appeal from a final decision of the workers' compensation ~~judge~~ court shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases."

NEW SECTION. Section 55. Repealer. Sections 39-71-309, 39-71-410, 39-71-705, 39-71-706, 39-71-709, 39-71-1001 through 39-71-1003, 39-71-1005, 39-71-2908, 39-72-611, and 39-72-612, MCA, are repealed.

NEW SECTION. Section 56. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 57. Codification instructions. (1) Sections 6 and 8 are intended to be codified as an integral part of Title 39, chapter 71, part 3, and the provisions of Title 39, chapter 71, part 3, apply to sections 6 and 8.

(2) Sections 13, 15, and 21 are intended to be codified as an integral part of Title 39, chapter 71, part 6, and the provisions of Title 39, chapter 71, part 6, apply to sections 13, 15, and 21.

(3) Sections 28 through 32 are intended to be codified as an integral part of Title 39, chapter 71, part 10, and the provisions of Title 39, chapter 71, part 10, apply to sections 28 through 32.

(4) Sections 44 and 45 are intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to sections 44 and 45.

NEW SECTION. Section 58. Saving clause. This act does not affect rights and duties that matured or penalties that were incurred before the effective date of this act.

NEW SECTION. Section 59. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 60. Applicability. This act applies to injuries occurring on and after October 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB330, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Workers' Compensation Laws; to provide that obtaining benefits fraudulently constitutes theft.

Workers' Compensation Court

ASSUMPTIONS: (Operations Impact)

1. Additional judge will be appointed as of 1/1/88.
2. Current hearings officer/attorney position will be eliminated.
3. Operating costs for judge position will be no more than for current hearing officer/attorney.

FISCAL IMPACT: (Operational Costs)

Expenditures:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	8.00	8.00	-0-	8.00	8.00	-0-
Personal Services	$224,559	$222,672	($1,887)	$224,359	$247,207	$ 22,848
Operations	119,713	119,713	-0-	110,767	110,767	-0-
Equipment	800	800	-0-	800	800	-0-
TOTAL	$345,072	$343,185	($1,887)	$335,926	$358,774	$ 22,848

Source of Funding: (Earmarked Revenue)

Revenue:

W.C. State Insurance Fund	$345,072	$346,959	$1,887	$335,926	$346,274	$ 10,348
Filing & Appearance Fee 500/yr @ $25 each	-0-	12,500	12,500	-0-	12,500	12,500
TOTAL	$345,072	$359,459	$14,387	$335,926	$358,774	$ 22,848

David L. Hunter DATE 2/12/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE 2/23/87

FRED VAN VALKENBURG, PRIMARY SPONSOR

Fiscal Note for SB330, as introduced.

SB 330

Revision of the Workers' Compensation Laws

ASSUMPTIONS:

A. Trust Fund Impact:

1. Policyholder mix will remain constant.
2. The State Fund's market share will remain unchanged.
3. The proposed benefit payment system will not create an incentive for current policyholders to seek coverage from private carriers.
4. Demands on benefits, wage compensation and medical expenses, will remain at current levels.
5. Obligation for the unfunded liability will be recovered in 10 years.
6. The obligation for the liability created by the Stelling/Buckman decisions will be recovered in 10 years.
7. Number of average weeks on permanent partial payouts do not exceed 300 weeks, cost savings will vary from 14% to 17%.

B. Uninsured Employers Fund Impact:

1. Benefits will be paid out according to amounts available in the fund.
2. Projections of revenue into fund cannot be made. Therefore, projections of expenditures from the fund cannot be made.

FISCAL IMPACT:

	FY 87	
A. State Compensation Insurance Fund		
1. Estimated 1987 premium income (includes 1/1/87 adjustment).	$ 64,800,000	
Amount required to reach adequate rate base.	11,862,000	
Estimated premium needed to maintain current system.	$ 76,662,000	
	Range	
	Low(---------)High	
2. Estimated premium required to maintain proposed system.	$ 63,629,000	$ 65,929,000
Estimated premium reductions % reduction from adequate base.	(13,033,000) [.1700]	(10,733,000) [.1400]

SB 330

3. Obligations to be Funded

a. Unfunded liability $81 million - annually for 10 years.	$ 12,344,000
b. Stelling/Buckman decision @ $25 Million - annually for 10 years.	3,800,000
Annual recovery of recognized	$ 16,144,000
Net Premium Increase	$ 3,111,000 to $ 5,411,000

B. Uninsured Employers Fund

The purpose of the reform is to allow the Division to pay benefits on a cash available basis. Current law requires the Division to maintain surpluses and reserves in the Fund. Funding sources remain the same.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

TRUST FUND ONLY. Rate reductions will depend on the organization's accident experience and the insurer's ability to offer premium decreases.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

TRUST FUND ONLY. The reform should make a significant contribution toward minimizing litigation, providing more emphasis on the most seriously injured worker, and instituting a return-to-work rehabilitation program.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

None.

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 14, 1987

The eleventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 14, 1987, at 1:00 p.m. in Room 325 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 315: Senator Bob Williams, Senate District 15, sponsor of the bill, gave the opening statement and reserved the right to close. A copy of his testimony is attached as Exhibit 1.

PROPONENTS: Mr. Gene Huntington, representing Governor Schwinden, rose in support of Senate Bill 315, and stated two years ago Governor Schwinden appointed a Governor's Workers' Compensation Advisory Council to study the total Workers' Compensation Act and propose recommendations for reform. The Council worked hard for the past two years to develop recommendations. Mr. Huntington believes Senate Bill 315 contains the recommendations of the Council. Any solution to the Workers' Compensation problems must reduce costs so future costs will not exceed the income and so that the Workers' Compensation program will not continue to be run in a deficit. This must be done by avoiding major rate increases and preserve the basic benefits of wage replacement, medical benefits for injured workers, and reduce litigation for some predictability and stability to the Workers' Compensation system. The Governor's bill will attempt to limit litigation by clearly defining benefits in the process for obtaining them so negotiation and litigation are minimized. The Governor's bill also proposes to replace the Workers' Compensation Court with the Board of Industrial Insurance, which is a process for settling disputes without going directly to court. The flood of litigation in recent years resulted in attorneys seeking new interpretations of the Workers' Compensation laws. Those different and changing interpretations of the law have increased the cost of the benefits, but have lead to a system that has very little predictability and stability in terms of its

Mr. Lloyd Doney, representing ASARCO Troy Unit, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 9.

Mr. Steve Seifert, representing Columbia Falls Aluminum Company, stated they support SB 315.

Mr. Don DeJarnett, representing Montana Steel and Supply, Billings, Montana, and the Billings Chamber of Commerce, gave testimony in support of SB 315. A copy of his testimony is attached as Exhibit 10.

CONSIDERATION OF SENATE BILL NO. 330: Senator Fred Van Valkenburg, Senate District 30, sponsor of the bill, gave the opening statement and reserved the right to close. A copy of his statement is attached as Exhibit 11.

PROPONENTS: Mr. Wade J. Dahood, attorney from Anaconda who practices Workers' Compensation law, stated he had listened to the proponents of SB 315, but he heard very little concerning the protection of the injured worker. Mr. Dahood stated the reason for SB 315 was not discussed, but he feels the reason for SB 315 is because the deficit that occurred during this administration and because of the heavy litigation load. Mr. Dahood stated in many of the injured worker cases, it takes him 90 days to receive his first check and it takes far too long for the Workers' Compensation Division to settle claims. Mr. Dahood feels the answer to some of the problems would be to appoint someone who has real experience working with the insurance business. Mr. Dahood stated there is no reason the Workers' Compensation rates are so high. There are ways to balance a budget. He stated there are two experts on the Workers' Compensation system who will be testifying today, they are Mr. Norm Grosfield and Professor David J. Patterson. These two experts are joining the proponents of SB 330 to urge the committee to adopt legislation that will not loose sight of the fact our constitution, laws, and government are based on protecting the citizen.

Rep. Jerry Driscoll, House District 92, stated he was on the Governor's Workers' Compensation Advisory Council. They submitted a report to cut 18-22% of the cost from the Workers' Compensation system, however, the administration did not want to follow the recommendation of that report. Thus, they came up with their own bill, SB 315. Rep. Driscoll stated of all the money paid into the system, injured workers receive less than half. Most of the cuts and changes presented are taken from the injured worker.

Senate Bill 315 would raise administration costs higher. Between 1985 and 1986 the administration costs were raised $1 million, medical benefits were raised $6 million, and workers benefits were raised $4 million. Senate Bill 330 would change permanent partial disabled from a maximum of 500 weeks to a maximum of 350 weeks. SB 315 would eliminate permanent partial benefits. SB 315 gives the permanently disabled worker a lump sum compromise, but it is really an interest-bearing loan. Rep. Driscoll urged the committee when considering the two different bills to read the Governor's charge to the Advisory Council and remember the injured worker. Costs must be reduced but the administrative costs do not need to be increased.

Mr. Howard Hultgren, a Billings chiropractor and member of the Governor's Advisory Council, stated the Advisory bill recommended the administration be divided. Currently the present administration has the responsibility of administering the Division and the State Fund, Plan 3. They recommended the administration be divided and Plan 3 be administered separately. Mr. Hultgren urged the committee to consider the division of administration and thus, improving the quality of the services rendered to the injured worker. He supports Senate Bill 330 because he feels it is more people conscious than Senate Bill 315. Mr. Hultgren feels there is a problem with the definition of injury, and this could lead to much litigation.

Mr. Norm Grosfield, prior Administrator for the Workers' Compensation Division and an attorney in private practice for Workers' Compensation issues since 1973, stated Advisory Councils have been used in Workers' Compensation since approximately 1969. He has worked with many of these councils and they have come to the legislative session with full support and submitted proposals to the legislature and the legislature adopted the proposals. He thought the council that was appointed to review the Workers' Compensation matters in 1985 was going to function the same way. Mr. Grosfield was concerned with the size of the council because with that amount of people it is hard to have unanimity. The Advisory Council gave 19 votes in support of the recommendations. Mr. Grosfield's areas of suggestion involved a reduction of benefits in the least important areas, which were death and permanent partial benefits, and the restricting application of the definition of injury in certain aggravation matters. He

feels the recommendations of the Advisory Council are good and avoid the complex government setup that is being proposed in SB 315. The Advisory Council bill, when compared to the complexity of the bureaucracy that will be established by the Governor's bill, will actually save greater funds, excluding the discussion of the definition of injury. Mr. Grosfield stated the Workers' Compensation system should not be made more complex than it already is, and the Governor's bill makes the system more complex. There are sufficient reductions in the benefit areas and in other areas to reduce the cost of Workers' Compensation in the Advisory Council's bill. Mr. Grosfield urged the support of the committee for SB 330.

Dave Patterson, Professor of Workers' Compensation Law at the University of Montana, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 12.

Mr. Brad Luck, a Missoula attorney who represents insurance companies and employers, and represents Workers' Compensation Plans 1, 2, and 3, and was also on the Governor's Advisory Council, said he is representing the Montana Association of Defense Councils. Mr. Luck agrees with certain statements made by people supporting SB 315. The employers of Montana cannot continue to pay for the Workers' Compensation system as it exists today. There is a need for immediate, swift and significant reform. Mr. Luck worked with the other members of the Governor's Advisory Council toward that end. He is concerned the thoughtful, significant and meaningful reform is in jeopardy. Mr. Luck stated if SB 315 passes it will be the biggest boom to attorney involvement in Workers' Compensation the state of Montana has ever seen. Mr. Luck said he supports the council bill, SB 330, because the council bill provides the framework for the meaningful, thoughtful reform in savings that everyone wants. Mr. Luck is convinced, after studying the ramification of both bills, the appropriate vehicle for reform is the council bill. He said there are three major differences of SB 315 and SB 330. They are, claims handling, permanent partial disability, and settlements and lump sums. Mr. Luck feels from an employer and insurer view, the council bill is the superior product. In relation to permanent partial disability, there seems to be a myth that the division bill will create a wage supplement system to save money and totally reform permanent partial disability benefits; however, this is not correct. One of the biggest differences between the

two bills is the abolition of the Workers' Compensation Court. The initiation of litigation in Workers' Compensation today has gotten out of hand. The Governor's answer is to get rid of the Workers' Comp. Court and replace it with a super bureaucracy. The council's bill suggests a refining of the system by limiting the attorney's fees that are available to a claimant to be paid by the employer and the insurer. Therefore, the incentive to go to court has been taken away. The council bill gives the court significant new power to handle its own proceedings, which it did not have before, and the power to sanction litigants for their attorneys for unnecessary and frivolous litigation. Also, the council bill presents a step by step process that must be gone through before anyone can even go to the Workers' Compensation Court, a process that will reduce litigation. Finally, the council bill, as does the division bill, indicates the act shall be construed according to its terms. Mr. Luck stated the combination of everything he mentioned will fine-tune and streamline the process. Mr. Luck stated there have been times when he has been frustrated with the Workers' Compensation Court; however, the problem is not the judge or the system, the problem is the framework of the act. If there is a problem, then make it less subjected to interpretation.

Mr. Ray Conger, representing the Montana Council on Compensation Insurance, stated if SB 315 is adopted in its present form, then $1 million of employers' liability insurance must be added to this bill under Plan 3. There will be a lot of employee/employer liability lawsuits that will be excluded under the general liability coverages that are standard in practice at this time. Mr. Conger does not feel claim examiners and hearing boards can work together in the same location and come together on any kind of mediation. After a claim examiner has turned down a claim, or the claim is going to be in dispute, at that point, the claim needs to be transferred to some other forum. It does not need to be transferred to a court as there is still room for mediation. Mr. Conger feels this position should be moved to the Policy Holders Compliance Division of the state of Montana. If they cannot come to an agreement on an informal basis, then it could go to the Workers' Compensation Court.

Mr. Glen Drake, representing American Insurance Association, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 13.

OPPONENTS AND GENERAL COMMENTS OF SB 315 AND SB 330:
Mr. Doug Crandell, Chairman of the Montana Wood Products Association, and manager for Brand S Lumber, Livingston, Montana, stated there has been a 240% increase over the last five years in Workers' Compensation Rates. Mr. Crandell stated he does not feel he could complain about Workers' Compensation rates unless he cares for safety and puts that caring into practice. Mr. Crandell feels they have put that caring into practice. In the past 7 months at Brand S, they had had no lost time injuries. Yet, even considering the success of their safety record, the rates are still increasing. He was surprised to find neighboring states compensation rates substantially lower. This puts their lumber mill at a great competitive disadvantage with the national lumber market. Mr. Crandell feels the reason the Montana Workers' Compensation Division has problems is because of the law; it is very complex, long, and ambiguous, which opens the door for litigation. Also, the Liberal Construction Clause has created a problem, which is, when in doubt, liberally construe the law in favor of the claimant. Since the law is so confusing there is almost always doubt. Mr. Crandell's employees want the same things he does - if they are injured, they want fair compensation quickly, without the need to share the money with an attorney. They feel the advisory council's bill falls short because it does not simplify or clarify the bill. Mr. Crandell supports the Governor's bill because it is an easy bill to read and understand. In its clarity, SB 315 benefits the injured and uninjured worker and the employer; however, it is bad for those whose livelihood is enhanced by a system where litigation and settlements are the norm. They oppose SB 330, and support SB 315.

Mr. Jim Murry, representing the Montana AFL-CIO, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 14.

Mr. Duane Hudson, an injured worker who has gone through the process to obtain benefits, stated he contacted the Workers' Compensation Division to check on his benefits but they put him on hold and do not answer his questions. He said if they pass SB 315, he does not have someone to represent him and they will keep putting him on hold and not answer his questions. He suggested the worker pay some of the Workers' Compensation premiums and maybe the worker will pay more attention to the effects of this bill.

Mr. Jim Roscoe, representing Roscoe Steel, stated he meets weekly payrolls and costs daily. He feels Workers' Compensation's original intent has been changed and there is an incorrect attitude toward the act; it is case law for a relative few. He stated Roscoe Steel hired a man on a work release program from Montana State Prison in 1983. His productivity and efficiency began to decline, and in a week of extreme turmoil and failure to report to work, he filed what Mr. Roscoe considers to be a fraudulent claim. That same week he was returned to prison for violating a minor. Workers' Compensation claims they initiated benefits for this individual on September 26, 1986, and are asking Roscoe Steel when this individual will return to work. He told of another case history of an employee at their Missoula Plant who was injured July 12, 1985. He was a short term employee. Other employees have seen this individual working at a gas station and building a house since he left their employment. Also, on March 1986 he was convicted of felony theft. As of January 31, 1986, this individual has received $11,975 from Workers' Compensation benefits. Also, in December 1986, EBI, a private insurer for Workers' Compensation paid this individual a lump sum of $27,800, and as a result of that lump sum payment, cancelled their policy with Roscoe Steel. Mr. Roscoe stated not all Workers' Compensation cases at Roscoe Steel are bad, and the Workers' Compensation principal is good. He also stated if the rates keep rising, businesses will be extinct in Montana.

Mr. Gene Fenderson, representing the Montana State Building and Construction Trades Council, presented a copy of some statistics to be added to his testimony, which is attached as Exhibit 15. Mr. Fenderson stated there is a problem of fraud concerning the Workers' Compensation benefits. There are cases of employees taking advantage of the system and there are cases of employers not paying total compensation for their employees. He described a fraudulent claim which happened recently on a state building by an employer/contractor, who is known for cheating. This can be done very easily by hiring everyone as an independent contractor and if the worker happens to get hurt on the job, the employer tells the worker he will turn it in that he is an employee. This goes on heavily in the construction industry in Montana, and it has got to be stopped. The problems are not going to be cured by cutting benefits for workers as long as unscrupulous employees and employers get away with these actions. Mr. Fenderson requested the chairman and committee members to check into this type of thing.

Ms. Maggie Sheen, representing herself, gave testimony in support of SB 330. A copy of her testimony is attached as Exhibit 16.

Mr. Willis Pickle, representing himself, stated in October 1974, he was disabled through an injury. He had slipped in some grease left by another employee, and as a result lost his left arm and the fingers of his right hand and sustained back injuries in the accident. He filed for Workers' Compensation benefits and it took several weeks to receive any benefits. Mr. Pickle was almost evicted from his home, bills began to pile up, and then Workers' Compensation benefits finally began. He filed for a lump sum settlement which was granted. Over a 4 year period, Workers' Compensation paid Mr. Pickle $25,000 in compensation benefits. He was told by Workers' Compensation after his accident that he was considered 100% disabled and entitled to lifetime benefits. In 1978, they cut off his benefits. He tried for 8 years to be reinstated with benefits. In October 1986, Mr. Pickle went to an attorney for help. Mr. Pickle asked Workers' Compensation Division to give him a copy of his complete file. They gave him a copy of his file for a cost of $96.00 His attorney agreed to represent him for nothing because the attorney came to the conclusion Workers' Compensation had not fulfilled their promises and not seen to his rehabilitation. The State Rehabilitation refused to give him the type of vocation of his choice and they refused to work with him. Mr. Pickle then refused to work with them because he felt they were not concerned with his rights. Thus, his benefits were cut off three times. Mr. Pickle stated he simply asked for what was just and honest and he was denied it and is still being denied what he deserves.

Ms. Marilyn Nelson, a claims representative with Plan 1 and Plan 2 stated she has reviewed SB 315 and finds the process unworkable. This bill would significantly increase the cost to employers and to insurance companies.

Mr. Vern Erickson, representing Montana State Firemen's Association, stated it has been well documented the fire service is one of the most dangerous occupations, both in the area of injury and death. They feel they would rarely, if ever, be able to collect through SB 315. They are opposed to SB 315.

Mr. Ben Everett, who served on the Governor's Advisory Council, stated the council's proposal contains reform legislation that answers every complaint brought forth today. SB 330 is supported by the insurance industry, the Montana Association of Defense Council, Trial Lawyers, insurance representatives, laborers, and employers. SB 315 is asking for more responsibility and they cannot handle the responsibility they have now. There are cases of people entitled to receive benefits who are not receiving benefits, and people who should not be receiving benefits that are receiving them. This is poor, ineffective administration. This conflict of interest should not be added to. Mr. Everett urged the passage of SB 330.

Mr. Tom Keegan, a Helena attorney who represents both claimants and insurers in Workers' Compensation cases, stated the committee should listen to the people who know the business best. Mr. Keegan stated if the 5-step bureaucracy replaces the Workers' Compensation Court, it will not do justice to the injured worker. Mr. Keegan supports SB 330 with one exception, which is limiting the widow of the deceased worker to 10 years of benefits if the children are grown. Mr. Keegan feels this is a horrible way to balance the deficit.

Mr. Brad Luck, a Missoula attorney, stated he is concerned that no one is discussing the specifics of the two bills. SB 315 has not been fully explained to most employers. Most employers believe SB 315 promises speedy benefits, avoidance of litigation, and quick adjudication. However, SB 315 actually provides confusion, invites litigation, and it is anything but self administering. The heart of the division bill is the elimination of the Workers' Compensation Court and the replacement of a 5-step bureaucratic process which is a creation of a super bureaucracy. Mr. Luck stated the 5-step procedure will take a minimum of 3 years, but could take up to 5 years. He does not understand how this lengthy process could be considered an efficient administration of justice. The backers of SB 315 state it will cut down on litigation, and Mr. Luck agrees because the workers and employers cannot afford to go through that process. Also, SB 315 is replacing one Workers' Compensation Court Judge with three highly paid board members. How can this be a savings. The state of Montana cannot afford the additional cost this superbureaucracy will cost for manning each level with personnel. Mr. Luck stated in 1974, the Legislative Auditor did a study of the administration of Workers' Compensation Division. The June 1974 report stated the

Division function of handling the State Fund, being an insurance company, constituted an incestuous conflict of interest and it was recommended to be terminated. However, it was never totally terminated and 12 years later, in 1986, the exact concerns were voiced by the Governor's Advisory Council. Now the Division wants absolute and total control of the system. Employers are not aware of the problem the definition of injury is going to create. It will cut down on the number of Workers' Compensation claims and the possibility of common law claims is real, and there is a high probability of an increase of liability insurance. Mr. Luck said he has been hearing there is no use for people to come and talk about the particulars of this bill and to talk about what is really involved because it has been said it is "greased", and the Department of Labor has said there is nothing that can stop their bill. Mr. Luck finds this somewhat curious because the Division received a lot of support prior to anyone ever reading the bill. Mr. Luck stated personally, he has more confidence in the legislative process and it is his hope the committee will consider both of these bills and use the good from SB 315 and place it in SB 330 for some real reform that is cost effective.

Senator Lynch stated if it is "greased", it is not known to the chair.

Mr. Don Wilkens, representing the Lumber and Sawmill Workers in Libby, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 17.

Mr. Don Jenkins, representing the Golden Sunlight Mine, Inc., gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 18.

Mr. Norm Grosfield, a Helena attorney who represents Workers' Compensation claims, and a prior Administrator for the Workers' Compensation Division, stated he supports SB 330. Mr. Grosfield reviewed the differences of the two bills. The Division adopted all the recommendations that would take away benefits from injured workers, plus, in some areas they have gone even further. The Division's bill eliminates the Workers' Compensation Court. Mr. Gorsfield totally favors the retention of the court and said he was involved in the creation of the court. The system that is being proposed is a complex system that does not provide an independent review. The Division states the worker has to appeal to this independent board; however, that is not true. The process takes you to an

employee of the Department of Labor and Industry to have the case heard. SB 315 specifically states the findings of fact of the hearing officer hired by the department, the same department which runs the State Fund, are conclusive unless they are not supported by substantial evidence. There is truly not an independent review as when you appeal to this commission, the commission is bound by the findings of fact. It would make more sense if this system was to be used to set up the first initial appeal at the commission level, which would remove some of the conflict problem. Mr. Grosfield stated the intent is to control the findings of fact. He said Senator Thayer asked the question, if a Workers' Compensation bill could be written in a simple, easy form so everyone could understand it. Mr. Grosfield explained the law in Workers' Compensation is relatively clear to the people who work with it on both sides. The Supreme Court clarified the permanent partial area in 1982 and the definitions are clear. The problem that is faced is the problem of fact in 90% of all cases that are litigated. Legislation cannot be drafted to control different factual situations. The definition of injury is basically the same definition all the jurisdictions of the United States and Canada use. There are some variations, but basically all jurisdictions cover repetitive trauma, unusual strains, and in a certain set of limited circumstances, it covers heart attacks and strokes. The Advisory Council recommended the evidence requirements be strengthened in that area. The proposal in SB 315 and SB 330 on aggravation will cut out a lot of potential cases in the heart attack area. There are two problems with putting the definition in as suggested. The first problem is it simply is not right, just, or fair. The second problem is a great danger is created in abolishing the Exclusive Remedy Rule and that is the pivotal rule of Workers' Compensation law. The initial law that was passed in 1909 was thrown out because a claimant could pursue a civil action as well as recover Workers' Compensation. If injury is defined so narrowly, then 40-50% of all injuries will be cut out with this definition; however, the Supreme Court states there must be an adequate remedy, and if you are not covered by Workers' Compensation, then it means a tort action. The third issue is the difference in subrogation, and that could be a minor issue. The AdvisoryCouncil recommended not to change the subrogation law, and the Division would reinstate the prior law which existed prior to the constitutional amendment and allow for recovery by the insurer against the third part.

The fourth issue is the Advisory Council stated a claimant should recover cost if they are successful before the Workers' Compensation Court. The Division's bill is removing that provision. The fifth area is permanent partial disability, and SB 330 will save the employer more than SB 315. The permanent partial area is one of the major areas where there can be cost savings. The sixth area is the area of rehabilitation. The Division's bill creates a complex, lengthy decision making process. Ten years ago there were no private rehabilitation vendors in the state of Montana. Today there are over 100. Mr. Grosfield believes there is a need for private rehabilitation vendors, and it should be recognized in the law. This is one of the major reasons there is such a deficit now, as all cases, even minor ones, are referred to rehabilitation. They are referred to private rehabilitation vendors because the state has too much work. Private rehab vendors charge between $40-50 an hour. The primary reason for the high cost of temporary total impairment is because under the rehab system, the Division wants to place in law, people are kept on rehab for a long period of time and they give them temporary total impairment, and that is a high cost. Mr. Grosfield feels rehab is overutilized, and he suggests the committee look into that area closely. The seventh area is the lump sum and settlement area. It is a great benefit psychologically to the claimant to get the case completed, and it is also a great benefit to the insurance industry. In Oregon, they cut out all lump sum settlements, and it was industry that came in and demanded the law be reinstated to allow resolution of cases. This was costing them far too much and the paper work and administrative work was far too great. Mr. Grosfield stated it will cost more to operate SB 315, both from the benefit standpoint and from the complexity of the bureaucracy which the insurance industry will have to operate under.

Mr. Keith Olson, representing the Montana Logging Association, gave testimony in support of SB 315. A copy of his testimony is attached as Exhibit 19.

Ms. Bonnie Tippy, representing the Montana Chiropractic Association, submitted amendments for SB 315. A copy of the amendments is attached as Exhibit 20.

Mr. Ray Tilman, representing Montana Resources, Butte, Montana, stated there is some good in both bills. The problem is only 40% of the money goes to the injured workers. When administrators and attorneys take money

from the fund, it is a problem for the injured worker. Montana Resources works hard to prevent injuries and to rehabilitate injured workers. Mr. Tilman stated if the committee looks at both bills and incorporates the good points of each, then there will be a good bill.

Ms. Peg Hartman, representing the Department of Labor and Industry, stated they are opposed to SB 330 and support SB 315. Ms. Hartman stated she was the previous Administrator of the Unemployment Insurance Division. She said in that division, there is a process required by Federal Law that calls for a hearing office, a board, a district court, and a supreme court. The process has been supported as not having a conflict of interest and as being an impartial fair hearing process by extensive national case law. This process provides an incredible amount of speed and no delay of justice, because 120 days is all that may lapse before 85% of the cases must be settled, and most of those cases go through the board. There is a minimum attorney involvement in the Unemployment Insurance process because it is so fast and the law is so clear.

Mr. Mike Micone, representing Western Environmental Trade Association, stated they oppose SB 330 because of the reduction of the permanent partial benefits to 350 weeks. They believe SB 315 provides the workers of Montana better opportunities and benefits. The rehabilitation section in SB 315, which emphasizes a return to work program, is something they firmly believe should be in effect. They also support the elimination of the Workers' Compensation Court. Mr. Micone invited the committee to research the suggestions of fraud involved in Workers' Compensation, but asked that they please not hold up the deliberations of the Workers' Compensation laws.

Mr. Jerry Okonski, a logging contractor from Libby, stated they support SB 315. They recognize there is a need for an immediate solution to this costly problem so the businesses can remain competitive. Mr. Okonski invited any interested party to visit his operation to see the level of their safety and the treatment of their employees. They feel SB 315 provides the greatest good for the greatest number in the long run.

Tom Simkins, representing Simkins Hallin Lumber Company, gave testimony supporting SB 315. A copy of his testimony is attached as Exhibit 21.

DISCUSSION ON SENATE BILL 315 AND SENATE BILL 330:
Senator Haffey stated to his knowledge, there is nothing "greased" about either bill being presented today.

Mr. Luck stated being new to the process, you say things that do not get fully explained. He stated he should have explained his statement by saying regardless of what is being said outside, he has all the faith in the world this committee is going to consider two complicated proposals on a complicated problem, and come up with the appropriate answer.

Senator Haffey asked Mr. Grosfield to consider Ms. Hartman's testimony and explain why he believes SB 330 is the best starting place to control costs and why he cannot convince the Division SB 330 is the best starting place.

Mr. Grosfield stated he has great respect for Bob Robinson. He said the toughest job at the Division is not Mr. Robinson's job, but it is the claims examiner's job. Concerning the testimony of Peg Hartman, unemployment is a simple system because it is a simple insurance concept. There are very few issues of dispute and there is little money involved compared to Workers' Compensation. In Workers' Compensation there is what is called the digest system in law, and it sets forth various different subject areas. Workers' Compensation is one of the largest areas in the digest system to study because there are so many complex issues that can arise. Under the unemployment law there are approximately 2 or 3 complex issues that can arise and the money that is being dealt with is relatively small. Mr. Grosfield believed Senator Haffey's primary question was directed toward the issue of permanent partial disability and how it is handled. Mr. Grosfield explained there needs to be sufficient people to operate this and to keep on top of the cases. State Fund adjustors have too many cases. Generally, it is fairly clear. Most cases involve medical pay and if there is wage loss, they are placed on benefits. In theory the benefit should be paid to the worker 14 days after the injury. The injured worker stays on temporary total benefits until a physican states they have reached maximum healing. At the point when they have reached maximum healing, a determination is then made as to whether the injured worker is permanently totally disabled and should continue to receive the same benefit or if they are able to go back to work at their old job. If they return to work, their benefits are cut off. If it is determined they are partially disabled with a permanent condition, it is

broken down into two issues. There is a wage loss permanent partial disability which means there has to be a demonstration of true wage loss, and there is an indemnity award. Under both bills, permanent partial wage loss would be kept in the law. Under the Division's bill, the injured worker would receive the permanent partial wage loss for up to 500 weeks and under the Advisory Council's bill, the injured worker would receive permanent partial wage loss for up to 350 weeks. There is a cost savings with SB 330's approach. The Division would calculate an indemnity award on a medical impairment rating and under the Division's bill, the injured worker would get 20% of the 500 weeks of benefits. Under the current law, the indemnity approach allows for an impairment award plus additional considerations. The Division does not like that approach because it is not a simple easily calculated approach. Mr. Grosfield stated the impairment awards are basically meaningless; they are decided by a doctor. The doctor will say he will not judge if the injured worker can return to work or what his limitations will be in the work place, he will just follow the AMIA guide and testify it is an impairment award. The adjustors of the State Fund will review all of the information regarding a claimant and offer a settlement of an indemnity award assuming the person does not have a wage loss. Most cases are resolved this way, and they do not go to litigation. Under the Advisory Council's bill there would still be that analysis and an agreement would have to be reached. For permanent partial benefits, the Advisory Council's bill codifies the current law but cuts back on the potential recovery.

Senator Haffey asked Mr. Grosfield with the potential for additional litigation, and with a court in existance, would you still conclude the lower cost of premiums will flow from SB 330 rather than SB 315.

Mr. Grosfield replied yes, especially with the fact there will not be a closure of cases, the cases will have to remain open for at least 10 years. Most cases under the current system are resolved between one and three years after the injury.

Senator Haffey asked Professor Patterson to respond to Mr. Grosfield's previous statement. Professor Patterson explained when he referred to a conflict of interest, he was referring exclusively to the judging process. In the judicial process one of the highest goals of the legal

profession is the decider of fact. It has to be completely impartial. To put the decision making process in the same area that administers the system, colors it. If this process was transported to some other dispute arena, the judge would have to be disqualified. If this process is adopted, it could bring down the entire system. Attorneys could object they are not receiving due process, and his client was not obtaining access to the judicial system. The Exclusive Remedy Rule which protects the employer from massive damage litigation would crumble.

Professor Patterson stated this is a good system and no one has said how to make the system sound.

Senator Keating asked Judge Reardon, the Workers' Compensation Court Judge, with regard to the Liberal Interpretation Clause and the case law, if the legislature changes the law, which will the court give most weight to in their decisions, either case law or legislative intent. Judge Reardon stated he was also the former chief legal counsel of the Division for 4 years, and he defended approximately 100 of these cases. Liberal construction is archaic in the sense it goes back to 1915. It came in when the law was originally drafted. Judge Reardon believes the drafters of the original law felt until some experience and some fact situations were presented, and if, all things being equal, a decision should favor the claimant because they gave up their common law tort right. Over the period of 70 years, Judge Reardon cannot even estimate the many times the Liberal Construction statute was used as the singular basis to decide a case. Judge Reardon stated he had a case after the testimony was completed and the medical testimony was given for both sides, and Judge Reardon believed the claimant, but it seemed to be the question of the medical evidence. Judge Reardon relied on the Liberal Construction clause and awarded the benefits to the injured worker. The insurance company appealed his decision to the Supreme Court and the Supreme Court reversed the decision because all things being equal does not mean the claimant always wins. Judge Reardon does not know if any significant changes would come about by getting rid of the Liberal Construction Clause. As a member of the Governor's Advisory Council, Judge Reardon voted to strike that language, not because he felt it was a determination of outcome of cases, but because he feels the benefit of doubt has changed from the claimant to the insurance industry.

Senator Keating asked Judge Reardon which carries more weight with the court, case law or statute. Judge Reardon stated first you apply the statute as written to a given set of facts. If the statute is not clear, then they will look to case law. If the law is revamped there will be no significant case law to rely upon. The clearer the statute the better, but what is clear to one person may not be clear to someone else.

Senator Keating asked Mr. Laury Lewis from his point of view, does Montana's Workers' Compensation system appear to be quite litigious compared to other systems. Mr. Lewis said he is familiar with the Nevada and California systems. In comparison to Nevada, Montana is highly litigious, and in comparison to California, Montana is fairly close. Senator Keating asked Mr. Lewis if the remedy would be tighter language, or a clearer definition to help reduce the amount of litigation. Mr. Lewis stated in his experience, an administrative hearing process is the best way to go.

Senator Thayer asked Mr. Lewis to explain his views of the rehabilitation system in Nevada. Mr. Lewis stated there was a trade-off made in Nevada which was highly litigious because it is an area that cannot be tied down, and it becomes a matter of legislative interest. In Nevada the situation was getting out of hand so they made a trade-off to get rid of other factors. When they determined permanent partial disability awards, it was based on an impaired rating system. This is a way to avoid litigation. Mr. Lewis stated the Nevada system works because there is a strong rehabilitation effort.

Senator Gage asked Mr. Lewis to compare the number of claims in Nevada to Montana's claims. Mr. Lewis stated he is not familiar with Montana's claims today, but Nevada has a two plan system; the self-insurers and the State Fund. Nevada's annual premium income is approximately $165 million and they have 650 employees. Their hearings process is, if a claimant's claim is denied, he has the right to appeal that decision and it goes to a hearings process. No attorneys are allowed in this process. If the claimant or employer is still not satisfied, they can appeal to the appeals officer and attorneys are allowed at this step. The next step would be the district court. Mr. Lewis stated this system works well.

Senator Lynch asked Mr. Robinson if both bills contain the provision dealing with incarcerated people not being eligible for Workers' Compensation. Mr. Robinson replied yes.

Senator Lynch asked Mr. Robinson why the committee cannot receive the number and names of the illegal, non-paying employers. Mr. Robinson replied if the Workers' Compensation Division knew every uninsured employer they would have fined them. The ones the Division finds out about are ones that have an injury submitted and when they code the injury to the insurer, they find there is no insurance. At that point they know there is an uninsured employer. There are approximately 1,000 injuries submitted on an annual basis that have no insurance coverage, and there is only one person to audit the books of those firms and bring them into compliance. The Division takes a couple steps, which are to demand they obtain coverage for the employees, and they are fined a minimum of $200, or double the premium they would have paid during the uninsured period. Senator Lynch asked Mr. Robinson to give the committee a figure of the amount of money the fund is losing from these illegal employers. Mr. Robinson stated he would try to get this information for the committee. Senator Lynch asked Mr. Robinson about the suggestion the bills were "greased", and if he attended a caucus meeting. Mr. Robinson stated they did not go to the Democratic caucus, but they were invited to the Republican caucus and made a presentation on the Workers' Compensation situation, which was the same presentation he made at the Senate Labor and Employment Relations Committee's Overview Hearing on Workers' Compensation on neither specific bill.

Senator Thayer asked Mr. Robinson if he feels with the passage of either bill, will there be a decrease of premium rates for employers. Mr. Robinson stated their actuary and experience tells them the State Fund rates are approximately 18-20% lower than they should be. Thus, the passage of SB 315 about equates with that, so to the extent costs are reduced 22%, it comes down to where the premium is now, and all of this will keep the State Fund even from this point on. If SB 330 passes, the cost reduction is not as much as in SB 315, and there would be an increase required. The State Fund's financial situation has been reviewed by the Legislative Auditor's Office to give a good idea of the cash projections in the future. Even with the reform in SB 315, the State Fund will not be able to pay benefits within 18-24 months. Senator Thayer asked Mr. Robinson to explain the definition of injury. Mr. Robinson stated they do not believe there will be a great amount of litigation due to this definition.

The definition where it speaks to stroke and heart attacks states if a doctor can determine that something occurred at the work place that would have caused the injuries, then they are covered. There must be a medical determination that something happened in the work place.

Senator Gage asked Mr. Robinson if the Workers' Compensation Administration and the Unemployment Insurance Administration cover the same kinds of expenditures. Mr. Robinson replied no, Workers' Compensation only covers medical costs of the injury and the wage loss due to the injury. Mr. Robinson stated the dollar amounts of the Unemployment Insurance system are smaller and the duration of time is shorter. Senator Gage asked Mr. Robinson if the Board of Industrial Insurance in SB 315 has anything to do with the Unemployment Insurance system. Mr. Robinson stated it would take over the responsibility of the current Board of Labor Appeals.

Senator Manning asked Mr. Robinson if it is the intent to delete benefits for cases involving repetitive trauma, under the proposed definition of injury in SB 315. Mr. Robinson replied yes. Senator Manning asked Mr. Robinson, under the definition of injury, is it the intention to delete compensable coverage for unusual strain. Mr. Robinson replied no.

Senator Lynch asked Mr. Robinson the salary of the current Labor Commissioner. Mr. Robinson replied, $45,000. Senator Lynch asked Mr. Robinson if they would give three people each 80% of that salary in SB 315. Mr. Robinson replied they will give three people $40,000. Senator Lynch asked what a support staff will cost for these three employees. Mr. Robinson replied they will be transferring the support staff with the Workers' Compensation Court across to the Board. The creation of a board and staffing the board will cost approximately $75,000 annually more than the current system. However, if they add the judge as in SB 330, it would be a "wash". Senator Lynch asked Mr. Robinson who would be qualified to sit on the Board. Mr. Robinson replied it would be people selected by the Governor, who have some understanding of the Workers' Compensation system and process, and have the integrity to conduct the work, and also, one person has to be an attorney.

Senator Lynch asked Mr. Everett if someone is injured and the new law goes into effect, and the injury is not under the new definition of injury, but there are suitable grounds to proceed, will the injured party's recourse be to sue

the employer. Mr. Everett replied yes, if the injury is excluded from the definition, but because it is an injury, it can be an injury for common law purposes. Senator Lynch asked if this would be taken to the district court. Mr. Everett replied yes.

Senator Blaylock asked Mr. Grosfield if the state of Montana would be better off with just the two plans. Mr. Grosfield stated a good competitive three way system is a healthy system. In Mr. Grosfield's opinion, a State Fund controls the operations and premiums of the private carriers, but a sound three way system is a healthy system and controls premium costs.

Senator Blaylock asked Mr. Luck if he had any specific ideas for fine tuning the Workers' Compensation Court. Mr. Luck stated the number of problems that caused the influx of litigation in the Workers' Compensation Court are things that were addressed in the Advisory Council's bill, such as limiting attorney fees. Many people do run to court to get the insurers attention. SB 330 requires that before a claimant can file petition with the court, they have to make a demand upon the insurance company supported by appropriate documentation and the insurance company has 20 days to respond. That alone will drop the amount of cases being filed. Mr. Luck believes the court needs more control of the people who appear and with the types of actions being filed. SB 330 has rules that will apply to this.

Senator Keating asked Mr. Grosfield what would the effects be in Montana with a two plan system. Mr. Grosfield stated with the assumption the State Fund will get back on its feet, if you allow only private carriers and self-insurers to operate, they are controlled by a national rating organization and they inflated the cost of Workers' Compensation in the 1970's. Without the State Fund controlling the operations of the private insurance carriers, there would be an uncontrolled system and the national organization would unreasonably raise the rates.

Senator Thayer asked Mr. Grosfield if he helped draft SB 330. Mr. Grosfield replied yes, he had some input.

Senator Gage asked Mr. Grosfield to explain his views on the possibility of putting the state into the same situation private enterprise is, by being able to pick who they insure and then creating an assigned risk pool, as in other areas of insurance. Mr. Grosfield stated an assigned

risk pool would have to be created and then the State Fund would have to be considered a fully competitive insurance carrier. Mr. Grosfield is not sure the state of Montana is large enough to do that and it may create more complexity than is needed. The State Fund can operate well below the premium cost of private carriers and one of the burdens it has to bear is it becomes the assigned risk pool. Mr. Grosfield stated it is an interesting concept and one he has not considered.

Senator Haffey asked Senator Van Valkenburg and Senator Williams in their closing if they are willing to work with the other side on the subject of the court and of merging the best parts of the two bills.

Senator Thayer asked Mr. Robinson to explain the difference of the two bills concerning normal labor market. Mr. Robinson stated the normal labor market is included in the Advisory Council's bill and it refers to a geographic area where the claimant lives. Basically, it means the job area a worker can travel to within a reasonable commuting distance and a job with an equitable wage. In SB 330, normal labor market speaks to a geographic area where you can find a job for the rehabilitated worker within this area, and if there is no job for that person in that area, that person will remain on benefits indefinitely. In Montana, a person can get hurt in a very small town and because there is no job within a reasonable commuting distance, they can stay on benefits indefinitely. SB 315 states Montana is the worker's job pool, and once a job is found, pay that person's costs of moving to that job.

Senator Keating asked Mr. Conger what would happen if Plan 3 were eliminated. Mr. Conger, Chairman of the Montana Classification and Rating committee, stated in the 1979 Session, the legislation was drafted because of the poor responses of National Council on Compensation Insurance to adopt statutorily a classification and rating committee in Montana. Every year the committee is presented with the suggested rate level, the rate level is given with input from the State Fund and from the National Council, and it is developed from Montana payrolls and Montana losses. Their rates have always tried to be competitive with the State Fund and they have felt they could compete at a rate of 15% above the State Fund. They set the rate at whatever level they feel they should be at. In Montana, they make the rates.

Senator Keating asked Mr. Conger if there were only two plans, would his group set the rates. Mr. Conger replied his group would still control the rates.

Senator Williams closed by stating SB 315 is a bill that is trying to keep the deficit from getting worse than it already is. Senator Williams stated he hopes if there is any fraud in the system it is detected and resolved. He said any action taken on the Workers' Compensation system will effect every man, woman and child in the state of Montana. Senator Williams said he realized this is a heavy burden on this committee and the legislature, but he urged the committee to support this bill. He said he will do everything in his power to work with all involved parties to achieve a good Workers' Compensation system in Montana.

Senator Van Valkenburg closed by stating he is very willing to work with every party who has an interest in this matter. He believes the bulk of the testimony heard would lead a reasonable person to come to the conclusion the Workers' Compensation Court is a good court and one with a real value in the state of Montana. It is obvious there need to be changes in the court and the statutory law that exists and if the committee and everyone involved comes to that conclusion, then SB 330 is the basis to start the changes. He believes it would be easier to work from SB 330 and incorporate the good ideas from SB 315 into that bill. Senator Van Valkenburg said he is disappointed to hear Ms. Hartman compare Workers Compensation to the Unemployment Insurance system because they are vastly different, and the comparison of the two systems administrative work is naive'. He agrees with Mr. Luck's statement that SB 315 is a well-intended catastrophe waiting to happen. Senator Van Valkenburg stated the legislature has an obligation to make this work, and he pledged his cooperation to make it work.

ADJOURNMENT: There being no further business to come before this committee, the hearing adjourned at 6:20 p.m.

SENATOR JOHN "J.D." LYNCH, Chairman

jr

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 14, 1987

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

DATE 2-14-1987

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Al & Joyce Bell	Mt Co K-W			
Tom Fuller	Mt Motor Carriers Assn	315		
Ted J. Doney	~~Mt~~ Rehabilitation Assn of Mt.	315 330	X	
John J. Gregory	Crawford & Co			
Jon Train	Century Agency			
Howard Hultgren	Advisory Committee			
Jim Lynch	Montana Logging Assn.			
Tom Towers	SELF			
Ken Madsen	Self			
Gary Allen	Mt. Retail Assn	315	X	
BOB HELDING	MT. RETAIL ASSN. REALTORS MT. MOTOR CARRIERS ASSOC	315	X	
Jim Smith	Mt. Assoc Rehab	315	X	
Larry Lewis	NEVADA			
Ed Carroll Jr.	PARK County Lumber	315	X	
George Ward	Mt Self Insurers Assn	315 330	X	
Mike McGee	SEEF	315	X	
Keith Anderson	MT Taxpayers Assoc	315	X	
Bill Olson	Mt. Contractors	315	X	
Claudia Clifford	United Food & Commercial Workers	315		X
Doug Crandell	Brand-S Lumber	315	X	
Robert Bingenheimer	Biggers Hoff Construction	315	X	
Ray Engesteth	Engesteth Const.	315	X	
Kurt Donath	MT Chamber of Commerce	315	X	
Ray Connell	Montana Coal & Conservation Dist.	330	X	
BILL KIRKPATRICK	CHAMPION INT'L CORP	315	X	
Ben Havdahl	MT MTN CATTLEMENS ASSN	315	X	

(Please leave prepared statement with Secretary)

STATEMENT REGARDING SENATE BILLS 315 AND 330

Mr. Chairman and members of the Committee, I am Fred Van Valkenburg, State Senator from District 30 in Missoula; and I am here today in support of Senate Bill 330.

As you know, Governor Ted Schwinden appointed a twenty-member Advisory Council in January of 1985 to review and evaluate the workers' compensation system in Montana and to submit its recommendations to the 1987 Legislature regarding proposed improvements in the system. The charge by the Governor was to provide a system that would be "people-sensitive as well as cost-conscious". The Advisory Council diligently worked for a period of two years to review all aspects of the Montana workers' compensation system. The Council was made up of representatives from all interest groups who have vital concerns about a viable, fair, and cost effective system to compensate workers for on-the-job injuries.

The Council, with near unanimity, submitted its report to the Governor, and it suggested several proposed changes for legislative consideration. I believe the proposed changes would provide for the needed reduction in costs to employers and yet maintain a system to fairly and justly provide protection to those injured while at work.

The concessions made by those representing workers injured on the job, and that would provide for a reduction in benefits and streamlining the system, and thus premium costs, are as follows:

1. Reducing permanent partial benefits for whole-body injuries from a maximum of 500 weeks to 350 weeks; and deleting the schedule of injuries so that all workers could be treated equally in relation to permanent disabilities.

2. Reducing death benefit payments from lifetime to payments for a maximum of either 500 weeks or until the youngest child reaches age 18, or age 22 if in an accredited school.

3. Strengthening the proof needed to establish injuries that involve the aggravation of a preexisting condition so as to preclude injuries wherein only medical possibilities are given as evidence for such injuries. This would reduce substantially the potential compensability of injuries, especially in the area of heart attacks, stroke, and minor back strains.

4. Limiting the assessment of attorney fees against insurers to only those in situations wherein it is determined that an insurer was unreasonable in its adjustment of a case.

5. Reducing temporary total disability benefits so that such benefits will not begin until the seventh day of wage loss after an injury. Currently, benefit payments are made from the first date of wage loss.

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6. Strengthening the powers of the Workers' Compensation Court, and restricting access to the Court to cases in which a good faith effort has been made to resolve the dispute between a claimant and an insurer.

7. Clarifying and simplifying the language in the law in the different benefit payment categories.

8. Streamlining the system whereby lump sum payments and agreements between a claimant and an insurer are processed.

9. Clarifying the current rehabilitation law and recognizing the role of private rehabilitation vendors.

In addition, the Council bill would provide for a small cost-of-living adjustment for continuing total disability cases, and would provide for job protection to workers who suffer on-the-job injuries.

It is my opinion that the major proposed changes would result in benefit reductions in those areas in which such reductions can take place without substantially prejudicing the rights of injured workers, and will provide the needed streamlining for the workers' compensation system.

It should be noted that the Advisory Council recommended the addition of one workers' compensation judge. I believe that such a provision could be deleted and that the one judge, along with the judge's support staff, could adequately handle the workload, especially in light of the other recommendations set forth in the Council bill regarding the requirements that must be met before a petition can be filed with the Court.

I understand that the Division of Workers' Compensation disagrees substantially with a number of the major recommendations of the Advisory Council. It has drafted and submitted its own bill to the Legislature for consideration. I have reviewed the Division's bill, and although it does adopt some of the recommendations of the Council in the area of benefit reductions, it also goes far beyond what the Council felt was needed to adjust the workers' compensation system to make it cost effective. My major concerns with the Division's proposals are as follows:

1. The Division's bill would abolish the Workers' Compensation Court and substitute the Court with Department hearing examiners, with an appeal to a three-member board, an appeal then to a District Court, and then to the Supreme Court. This would greatly increase the complexity of the review process and would not provide for an impartial review of disputes, especially between a claimant and the State Compensation Insurance Fund. In effect, a claimant would have to appeal back to the same department involved in the dispute, and this simply does not provide for a fair and adequate dispute resolution system for injured workers.

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2. The Division would completely change the current definition of 'injury', and substantially restrict compensation for injuries suffered on the job. The proposed law would be contrary to the major trend in recent years in all jurisdictions regarding coverage for on-the-job injuries, in that it would prevent benefit payments for injuries suffered through repetitive trauma or by unusual strain (those conditions involving a worker who is doing his usual work in his usual manner, and suffers internal or external physical harm). It should be pointed out that such a restrictive definition of injury may very well result in an elimination of the exclusive remedy provisions of the workers' compensation law. This would allow injured workers to file civil actions in District Court against employers who suffer on-the-job injuries when such injuries are not covered by workers' compensation insurance. This would substantially increase the exposure for employers with resulting increase in liability insurance premiums.

3. Contrary to the Advisory Council recommendations that the subrogation laws be left intact, the Division's bill would provide for subrogation against any third party recovery, even though an injured worker was not fully compensated for his injuries.

4. The Division, contrary to the recommendations of the Advisory Council, would not allow a recovery of costs to injured workers who are successful in the hearing process.

5. The Division's proposal would completely rewrite the permanent partial benefit area, substantially revising the system for the payment of benefits to injured workers. It is submitted that the proposal suggested by the Division would provide a protracted and complex system whereby cases could never be resolved, and it would provide little or no cost savings in the area of permanent partial benefits.

6. The Division would restrict the settlement of cases to a very limited set of circumstances, contrary to proper claims management systems whereby cases are adjusted and resolved. The Division's proposal would leave cases open almost indefinitely, and such a system is not only detrimental to injured workers, but also to insurers as well as the operations of the Division.

7. The Division's bill would provide an extremely complex system for rehabilitation; and in many ways would result in unfairness in the evaluation of potential viable rehabilitation programs for injured workers.

I strongly urge the Committee to carefully evaluate both bills and the ramifications of the varying proposals in the two bills. It is my belief that the Advisory Council's bill is certainly the better proposal and should be the format from which needed change can take place. Possibly some adjustments can be made between the two proposals with amendments to change the Advisory Council's bill in limited areas. I would be happy to work with the Committee in an effort to resolve the areas of dispute.

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BILL NO. SB 330

Ex #

UNIVERSITY OF MONTANA

School of Law, University of Montana, Missoula, Montana 59812 (406) 243-4311

February 13, 1987

Senator J.D. Lynch
Senate Labor & Employment Relations Committee
State Capitol, Room 325
Helena, MT 59101

Dear Senator Lynch:

Thank you for this opportunity to appear before the Senate Labor Committee. I will be most happy to answer any questions regarding my views on the various proposals in the legislature regarding workers' compensation.

I have prepared some general written comments for the committee which will be given to the Committee Secretary.

Sincerely,

David J. Patterson

DAVID J. PATTERSON
Professor of Law

DJP:cw

cc: Senator Haffey
Senator Blaylock
Senator Manning
Senator Thayer
Senator Gage
Senator Keating
Senator Galt

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DATE 2/14/87
BILL NO. SB 330

75th Anniversary of the School of Law

TO: Senator John Lynch

FROM: David J. Patterson
Professor of Law

COMMENTS ON DISPUTE RESOLUTION:
THE WORKERS' COMPENSATION COURT

Introduction:

My name is David J. Patterson; I am Professor of Law at the University of Montana Law School. I have worked in Workers' Compensation Law for 21 years. The past 19 years I have taught Workers' Compensation at the Law School in Missoula. Periodically I have served as a Hearing Examiner, a function that involves deciding disputed claims for compensation. Presently, and for many years, I have served as Chairman of the State Bar Ethics Committee. I have prepared a casebook on Workers' Compensation and have read and studied almost every significant case decided since the Act's inception in 1915. I have been involved with the system when disputes were theoretically decided by the old Industrial Accident Board, but in reality decided by the Administration. I have witnessed and consulted about the inherent conflict of interest problems and scandal that resulted from the previous system. Conflict of interest because decision making must be separate and distinct from any interest in outcome; scandal because bias leads to abuse.

Scope:

My testimony is intended to be limited to the dispute

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resolution process, the Workers' Compensation Court approach. I do not question the well-meaning intentions of all involved and share in the goal of legal and fiscal reform. But regardless of well-meaning intentions and the recognized immediate concern for reducing cost, one central fact remains: There has to be a mechanism for resolving disputes about compensability of claims and amounts of benefits if we are going to have any system at all for helping injured workers. This is not to say just workers in heavy industry, but virtually every worker in the state -- office worker, school teacher or grocery store checker. My interest is in having the most fair, efficient and cost effective system possible.

Court v. Industrial Appeals Board:

Without reservation, I unequivocally favor that disputes be resolved by the Workers' Compensation Court.

(1) This Court was established as a direct result of the Legislature's dissatisfaction with the previous method of deciding disputes. This dissatisfaction was evidenced by the Legislature's refusal to follow the recommendations of the Montana Commission on Executive Reorganization (Report, 1970) to place decision-making in the hands of the Division. The Legislature created the Court out of concerns for independence in decision-making. This Legislature should be

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concerned with that same impartiality. In my judgment the Department bill does not adequately address that concern. It is essentially the old system. In no area of the law is there more concern for the appearance of impartiality and fairness. When disputes are decided, the decision-maker must be viewed by the worker as absolutely independent. Claims of conflict of interest are very strictly construed when the judging process is involved. This Legislature progressively, and wisely, addressed that concern when it created the Court. I have grave concern about the conflict issue raised by the Department proposal and urge that the Court be preserved.

(2) The Advisory Council has studied the compensation system for months. Its membership is composed of the most knowledgeable and experienced workers' compensation functionaries in the state. It has recommended legislation that directly addresses the need to cut costs. The Department bill does not. The Advisory Council bill was composed after public hearing and reflection and like the Legislature before, recommended an independent judiciary.

(3) There have been observations that the Court is the reason for the State Fund deficit. This is like saying the umpire is responsible for making the rules. The Legislature makes the law, the courts interpret that law. If, as it appears

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the law needs changed, now is the time to address Supreme Court decisions and Compensation Court decisions that the Legislature decides are wrong or too costly. It certainly is not the time to change the one bright spot in the whole system for a system that failed once before and must be more costly. In that regard I will close by making this observation: I sincerely fail to understand how a system that would replace an excellent, efficient court (one Court) with an added layer of bureaucracy, with appeal to every District Court in the state, and then with appeal to the Supreme Court can possibly save money. I urge you to save the Court and change the law that, by definition, it must follow. The Advisory Council proposal fine-tunes a good system.

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